



[Billing Code: 6750-01-S]

FEDERAL TRADE COMMISSION

16 CFR Part 259

Guide Concerning Fuel Economy Advertising for New Automobiles

AGENCY: Federal Trade Commission

ACTION: Final rule; adoption of revised guides.

SUMMARY: The Federal Trade Commission (“FTC” or “Commission”) issues final amendments to the Guide Concerning Fuel Economy Advertising for New Automobiles (“Fuel Economy Guide” or “Guide”) to address advertising claims prevalent in the market and harmonize with current Environmental Protection Agency (“EPA”) and National Highway Traffic Safety Administration (“NHTSA”) fuel economy labeling rules.

DATES: Effective [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

I. Background

In 1975, the Commission issued the Fuel Economy Guide (16 CFR part 259) (40 FR 42003 (Sep. 10, 1975)) to prevent deceptive fuel economy advertising for new automobiles and facilitate the use of fuel efficiency information in advertising. To accomplish these goals, the Guide advises advertisers to disclose established EPA fuel economy estimates (*e.g.*, miles per gallon or “MPG”) whenever they make any fuel economy claim based on those estimates. In

addition, if advertisers make claims based on non-EPA tests, the Guide advises them to disclose EPA-derived information and provide details about the non-EPA tests, such as the test's source, driving conditions, and vehicle configurations.

The Guide helps advertisers avoid deceptive or unfair fuel economy claims.¹ It does not address the adequacy of EPA fuel economy test procedures or the accuracy of EPA label content. Such issues fall within the EPA's purview and are generally outside the Guide's scope.

II. Guide Amendments

On June 6, 2016, the Commission sought comment on proposed amendments to the Guide (81 FR 36216) ("2016 Notice"). Consistent with the Commission's other guides, these proposed changes updated the Guide's format with a list of general principles to help advertisers avoid deceptive practices and detailed examples to illustrate those principles. Additionally, the proposed amendments provided guidance on claims involving EPA-based MPG ratings, non-EPA tests, vehicle configuration, fuel economy range, and alternative fueled vehicles. The Commission conducted Internet-based research exploring consumer perceptions of certain fuel economy marketing claims.² The Commission based the proposed amendments on this research, as well as the EPA and NHTSA regulations, which have been amended since the last Guide review. The Commission received seven comments in response.³ Having reviewed these

¹ The Guide does not have the force and effect of law and is not independently enforceable. However, failure to comply with industry guides may be an unfair or deceptive practice. The Commission can take action if a business engages in unfair or deceptive practices in violation of Section 5 of the FTC Act (15 U.S.C. 45(a)).

² Additional information about the study, including the questionnaire and results, is available on the FTC website. See <https://www.ftc.gov/policy/public-comments/initiative-663>.

³ The comments can be found at <https://www.ftc.gov/policy/public-comments/initiative-663>. They include: Consumer Federation of America (CFA) and the Center for Auto Safety (CAS) (jointly) (referred herein as "CFA") (#13); National Automobile Dealers Association (NADA) (#11); Association of Global Automakers (Global Automakers) #9; Auto Alliance (Alliance)

comments, the Commission now publishes its final amendments to the Guide.

III. Issues Discussed in the Comments

As discussed below, the comments addressed several issues, including the Guide's overall benefits, single mileage claims, alternative fueled vehicle claims, non-EPA estimates in advertising, and the Guide's format and wording.

A. Guide Benefits

The commenters generally supported the proposed Guide revisions. For example, the Alliance noted that the amendments "represent a constructive revision." Commenter Hilandera added that the changes "add transparency to advertising by local dealers and national media" and help consumers "evaluate whether or not to purchase a particular car model." Commenters also commended the FTC consumer research. The Global Automakers stated that the study results "allow for better, data-based evaluation of advertising statements, rather than speculating on how consumers might interpret those statements."⁴ NADA noted the research lends "support to several of the proposed changes to the Guide."

B. Single Mileage Claims

Background: The previous Guide stated that, if an MPG claim involves only city or only highway fuel economy, the advertisement need only disclose the corresponding EPA city or highway estimate (16 CFR 259.2(a)(1)(ii)). In the 2016 Notice, the Commission did not propose changing this approach. The Commission explained that single mileage (*i.e.*, single driving mode) claims are not likely to deceive consumers as long as the advertisement clearly identifies the type of estimate (*e.g.*, city, highway, or combined), and the estimate matches the content of

(#10); Growth Energy (#8); Isenberg (#6), and Hilandera (#7).

⁴ One commenter (Isenberg) noted that EPA and FTC should improve fuel economy testing. However, as explained above, testing accuracy falls outside of the Guide's scope.

the advertised claims. Moreover, consumers have seen such estimates in advertising and on EPA labels for decades. In light of this consumer experience, the Commission stated that it seems unlikely that a single, clearly-identified mileage estimate would lead to deception.

The 2016 Notice further explained that the FTC consumer study supports the conclusion that consumers would not be deceived. For example, when shown a single highway mileage claim (*e.g.*, “This car is rated at 25 miles per gallon on the highway according to the EPA estimate”), the vast majority of study respondents (74.6%) correctly answered that the car would likely achieve that MPG in highway driving, and the responses for alternative interpretations were low.⁵ The results were similar when respondents were asked about a claim for a combination of city and highway driving.⁶

As the Commission explained, this research suggests that single mileage claims do not deceive consumers as long as the claim specifies the mode of driving involved (*e.g.*, highway, combined, etc.). Given the absence of evidence demonstrating that such claims are deceptive, the Commission did not propose changes. Thus, consistent with the previous Guide, the Commission proposed a provision (§ 259.4(c)) that continued to advise marketers that EPA fuel economy estimates should match the type of driving claims (*e.g.*, city, highway, general, etc.) appearing in the advertisements. For instance, if the advertiser makes a city fuel economy claim, it should disclose the city rating. Likewise, where an advertiser makes a general fuel economy claim, it should disclose both the highway and city rating (or combined) to prevent deception.

Comments: The comments differed about the proposed guidance for single mileage

⁵ See Q5c. The response results for other choices, with no control, were: city rating (5.8%), combined rating (10.7%), unsure (5.5%), and none of the above (3.5%).

⁶ The results for Q5d were, not accounting for a control: combined (76.6%), highway (10%), city (4.2%), not sure (6.2%), and none of the above (2.5%).

claims. Some supported the Commission's proposal. For instance, Global Automakers argued that the consumer research supports the Commission's conclusion and that, after 40 years of federally-mandated fuel economy information, "consumers are very aware of the significance of city vs. highway fuel economy estimates." However, CFA strongly disagreed, arguing that a single city or highway MPG number is deceptive.

According to CFA, advertisers' failure to disclose city or combined ratings along with the highway rating constitutes a material omission likely to mislead consumers. In CFA's view, because no consistent relationship exists between city and highway estimates, consumers cannot infer one of the ratings based solely on the other or predict their own experience based on a single rating. Accordingly, CFA argued that automobile advertisers should present both the highway and city numbers, the combined, or all three in their fuel economy advertising. As detailed below, in support of this position, CFA discussed the FTC's research, submitted its own research, and highlighted additional arguments supporting its contention that highway-only MPG claims are misleading.

First, CFA addressed and critiqued the FTC research and associated analysis, claiming that the Commission failed to highlight a key result and that the study's question ordering led to biased responses. Specifically, CFA argued the results of Question 6c reveal that a single mileage claim is likely to deceive a significant minority of consumers. The question presented respondents with a claim stating that "This car is rated at 25 miles per gallon on the highway according to the EPA estimate" (Q6c) and then asked them whether they would expect to achieve that rating if they used the advertised vehicle for all their driving. According to the results, 20.7% of the respondents said they would probably get 25 MPG overall for all their driving. CFA contended this result demonstrates that, even if accompanied by a clear and

prominent disclaimer that applies only to highway driving, a single mileage number misleads a significant minority of consumers into overestimating the MPG they will achieve.

Additionally, CFA claimed the questions most relevant to the single mileage claim appeared after “respondents had already experienced a number of questions emphasizing the distinction between highway and city driving and estimates.”⁷ CFA contended the appearance of the city and highway mileage claims earlier in the questionnaire biased responses to subsequent questions.

CFA also highlighted its own research. Its national telephone survey presented three questions. First, it showed respondents an advertisement stating “31 miles per gallon EPA highway estimate” and then asked whether they would be more or less likely to consider buying the vehicle if that advertisement also stated “19 miles per gallon EPA city estimate.” Overall, 43% of respondents said the city number would affect their behavior (26% said it would make them less likely to buy the car, while 17% said it would make them more likely). CFA asserted that, because over two-fifths of the respondents said the city rating disclosure would change their behavior, advertising should present both numbers.

Second, the CFA survey asked respondents whether “it is misleading to allow advertisers to present only a vehicle’s miles per gallon estimate for highway driving.” Before presenting this question, the survey informed participants that “[v]ehicles nearly always get more miles per gallon, or higher mileage per gallon, on highway driving than on city driving.” Sixty four percent of respondents indicated that presenting only the highway number in advertising is misleading. Third, the CFA survey asked respondents which type of claim (*i.e.*, highway and city MPG, combined MPG, city MPG only, or highway MPG only) automobile advertisers

⁷ These prior questions included Q3b, Q3c-e, and Q5a.

should be required to make in “a fuel economy claim.” In response, 65% identified both highway and city, 23% pointed to a combined estimate, 6% to the city rating, and only 3% to the highway number.

Finally, CFA made several additional points. First, it explained that consumers are less likely to drive on the highway than in the city. It noted that, in approximating typical consumer driving patterns, the EPA combined number assumes 45% highway driving and 55% city driving. Second, it presented data demonstrating that little correlation exists for the majority of vehicles between a vehicle’s highway MPG and its corresponding city or combined MPG. Given this variability, CFA concluded that consumers cannot accurately infer a model’s city or combined MPG from a single highway rating, and those who attempt to make such an inference would be misled by a single mileage number.⁸ CFA further argued that, despite this variability, FTC has concluded consumers have a particular understanding of the relationship between city and highway ratings that leads them to “impute their own expected mileage, or compare mileages, based on just the highway number.” CFA concluded that the city and highway MPG figures together allow consumers better to assess, based on their own personal experience, MPG differences among vehicles.

Discussion: Consistent with the Commission’s previous guidance, the final Guide does not advise against advertisers making single mileage claims.⁹ Neither the FTC study nor the comments provide clear evidence that such claims are deceptive. As detailed in the 2016 Notice,

⁸ Likewise, CFA asserted that the appearance of the city rating only in an advertisement is equally misleading. However, CFA stated that “[i]f the FTC were to allow only one number, which we don’t recommend, in order to avoid deception, they should only allow just the city as that is the condition under which most people drive, according to the EPA.”

⁹ The final Guide continues to advise against unqualified mileage claims that fail to specify driving mode (*e.g.*, 46 MPG) (§ 259.4(c)).

the FTC research suggests single mileage claims do not lead consumers to believe they will achieve that rating in other modes of driving. In addition, as discussed below, such claims do not appear to constitute a deceptive omission. While including MPG ratings for multiple modes of driving in advertising (*e.g.*, disclosure of both city and highway MPG, or combined MPG) provides consumers with more information about vehicle fuel economy, the FTC Act requires advertisers to disclose only information that is necessary to prevent consumers from being misled – not all information that consumers may deem useful. As discussed below, the Commission disagrees with CFA’s interpretation of the FTC study results. In addition, CFA’s own research does not provide convincing evidence of deception.

First, the Commission disagrees with CFA’s assertion that the question Q6 responses demonstrate a single mileage claim deceives a significant minority of consumers. Question Q6c specifically asked respondents to read the statement “This car is rated at 25 miles per gallon on the highway according to the EPA estimate,” and to choose a closed-ended answer that “best describes what you would expect to get if you used this car for all your driving.” Respondents chose from several close-ended answers indicating whether their results, based on their own driving, would be higher than, lower than, or similar to the advertised rating. As CFA noted, 20.7% of participants responded, “I would probably get 25 miles per gallon.” In CFA’s view, this figure demonstrates that the claim deceived a significant minority because these participants believed the highway rating would be achieved in all of their driving.

However, the responses to Q6 do not provide a reliable measure of whether a highway-driving claim leads respondents to take away a false or misleading claim about ratings for other driving modes. First, because the survey asked respondents to consider their own driving habits, some portion of this 20% may be consumers who drive a lot on the highway. Those consumers’

answers do not demonstrate that the disclosure was deceptive. Second, because there is no control for these particular results, some portion of the answers likely represents random guessing, confusion about the question, or other factors absent in a real-world advertising context.¹⁰ Thus, although comparing responses across questions Q6a-c helps to gauge how respondents' expectations for their own mileage may generally differ depending on the claim, the responses to these individual questions, considered in isolation, do not provide meaningful, specific measures of whether any of these claims are false or misleading.

Second, contrary to the commenters' suggestions, the question sequence in the FTC study is unlikely to have significantly impacted the research results. According to CFA, questions involving different driving modes appeared early in the survey. In its view, these questions "sensitized" (or "educated") participants and caused them to answer later questions about driving modes differently than they would have if they had not been exposed to these prior questions. CFA pointed to three examples of questions appearing early in the study (Q3b, Q3c-e, and Q5a) that, in its view, tainted later results. However, the questions themselves did not mention different driving modes. Additionally, two of these three examples (Q3b and Q5a) were open-ended questions, where participants typed their answers into a blank text box.¹¹ Though some respondents mentioned highway and city driving in their typed responses, no respondent could see any answer other than their own. Therefore, the questions could not have sensitized study participants.

¹⁰ See, e.g., Diamond, Shari S. "Reference Guide on Survey Research." *Reference Manual on Scientific Evidence, Third Edition*, Federal Judicial Center, 359-424, <https://www.fjc.gov/sites/default/files/2015/SciMan3D01.pdf>.

¹¹ Terms listed in the questionnaire codebook (e.g., "highway" in Question 18) may have suggested that these questions presented respondents with specific answer choices (i.e., were close-ended). In fact, the terms listed in the codebook are the code categories used to sort respondents' individual answers to these open-ended questions.

Additionally, the other example offered by the commenters, Q3c-3e (each respondent answered only one of these), is unlikely to have biased respondents. These questions displayed several closed-ended answers, one of which read, “This model gets up to 30 miles per gallon depending on whether it’s highway or city driving.” The questions did not specify whether one mode of driving yields different mileage than the other.¹² Despite the mention of highway and city driving, it is unlikely the mention of these modes of driving biased respondents in answering subsequent questions. For decades, miles per gallon ratings for highway and city driving have been familiar concepts in advertising. These ratings routinely appear in television advertising, on websites, and on vehicle labels in showrooms. Thus, the reference to modes of driving is not likely to be novel to typical consumers, particularly the recent or prospective car purchasers who participated in the study. Accordingly, the limited mention of driving modes in this prior question is unlikely to have affected significantly respondents’ subsequent answers.

Third, several aspects of the CFA study reduce its utility in addressing the question at hand. For instance, CFA’s first study question, QE1, asked whether adding a city rating to a highway rating claim would change the likelihood participants would purchase a particular car. As constructed, the question merely provides evidence that the city mileage rating may be useful to the consumer’s decision. It does not demonstrate that the highway rating, standing alone, is deceptive. In addition, the two other principal questions in the study (questions QE2 and QE3) sought the respondents’ personal opinions about whether certain claims would be misleading or desirable. Such opinion questions do not furnish reliable evidence about deception because they rely on respondents’ opinions about the claim’s effects, as well as their own understanding of

¹² Although consumers may have their own preconceived notions about the significance of different fuel economy ratings, the question itself did not provide such information.

what deception means. QE3 is additionally problematic because it asks respondents only to identify disclosures that “auto advertisers should be required to include if making a fuel economy claim,” even though consumers could have various reasons other than the prevention of deception for wanting advertisers to disclose this information. Finally, the study’s lack of control questions reduces its usefulness, particularly given that CFA’s questions seek respondents’ personal opinions, as discussed above.

Fourth, CFA argued that a highway mileage-only claim constitutes a misleading omission because consumers are not aware that city ratings can be substantially lower than highway numbers and, instead, believe a city rating can be derived from the vehicle’s highway number. As CFA explained, no consistent relationship exists between city and highway ratings among models on the market.¹³ Compared to the highway ratings, city ratings can be much lower, slightly lower, and even greater in some cases. These facts do not demonstrate that single mileage claims are deceptive. In its Policy Statement on Deception, the Commission explained that a “misleading omission occurs when qualifying information necessary to prevent a practice, claim, representation, or reasonable expectation or belief from being misleading is not disclosed.”¹⁴ In this case, the FTC research suggests that consumers are not misled by stand-

¹³ CFA asserted that the FTC has concluded consumers have a particular understanding of the relationship between city and highway ratings that leads them to “impute their own expected mileage, or compare mileages, based on just the highway number.” Although the Commission observed that many respondents expect the combined MPG to be lower than highway (81 FR at 36220, n. 31), the Commission did not intend to imply that consumers can impute the combined or city MPG based on the highway number.

¹⁴ See FTC Policy Statement on Deception, appended to *Cliffdale Associates, Inc.*, 103 F.T.C. 110, 174 (1984) (<https://www.ftc.gov/public-statements/1983/10/ftc-policy-statement-deception>) (“Deception Policy Statement”). “In determining whether an omission is deceptive, the Commission will examine the overall impression created by a practice, claim, or representation. For example, the practice of offering a product for sale creates an implied representation that it is fit for the purposes for which it is sold. Failure to disclose that the product is not fit constitutes a

alone highway mode claims. As discussed above, the CFA research does not clearly indicate otherwise. Additionally, there is no clear indication consumers misperceive the relationship between city and highway ratings in a particular way that renders otherwise truthful highway mileage claims misleading. In fact, given the wide, longstanding availability of highway and city mileage ratings in the market, such misperception seems unlikely.

C. Alternative Fuels

Background: The proposed Guide amendments advise marketers that, if a flexible fueled vehicle (FFV) advertisement mentions the vehicle's flexible fuel capability and makes a fuel economy claim, it should include the EPA fuel economy estimates for both gasoline and alternative fuel operation. The proposed Guide further explains that, without such disclosures, consumers may assume the advertised MPG rating applies both to gasoline and alternative fuel operation.

Comments: The comments raised two concerns about this guidance. First, the Alliance asked the Commission to clarify that advertisers may provide only one fuel economy rating for FFVs if the advertisement clearly states the rating applies to gasoline operation. In the Alliance's view, the manufacturer should be able to highlight the vehicle's rating under a single fuel without adding unnecessary wording to disclose both fuel ratings. According to the Alliance, such claims are not deceptive as long as "the advertised rating cannot reasonably be understood by the consumer to apply to both fuels."

Second, the Global Automakers and the Alliance asked for clarification that the proposed flex-fuel guidance does not apply to plug-in hybrids (PHEVs), which are rated for both charge-

deceptive omission Omissions may also be deceptive where the representations made are not literally misleading, if those representations create a reasonable expectation or belief among consumers which is misleading, absent the omitted disclosure." *Id.* at n. 4.

depleting (expressed in MPGe) and charge-sustaining operation. These commenters noted that the Commission did not propose advising advertisers to disclose MPGe in advertising for electric vehicles because it is unclear whether such disclosures are essential to preventing deception and whether consumers understand and use such disclosures.¹⁵

Discussion: The Commission has modified the FFV guidance to address the Alliance's suggestion regarding qualifications for FFV gasoline mileage claims. We agree that a clear and prominent disclosure limited to gasoline operation may obviate the need to disclose the vehicle's alternative fuel mileage. The final amendments contain language acknowledging this possibility.¹⁶ In addition, in response to comments about PHEVs, the Commission has modified the final Guide to clarify the example does not apply to such vehicles.

D. Non-EPA Estimates

Background: Since its initial publication, the Guide has addressed fuel economy claims based on non-EPA tests. In issuing the Guide in 1975, the Commission explained that "the use in advertising of fuel economy results obtained from disparate test procedures may unfairly and deceptively deny to consumers information which will enable them to compare advertised automobiles on the basis of fuel economy."¹⁷ The current Guide advises advertisers to provide several disclosures whenever they make a fuel economy claim based on non-EPA information. Specifically, § 259.2(c) states that fuel economy claims based on such information should: 1)

¹⁵ Growth Energy also asked for clarification that the proposed Guide amendments do not create any changes to the EPA-required labels. They do not. In addition, Growth Energy asked whether the Guide "in any way limit truthful and substantiated statements an advertiser may make regarding the benefits of FFVs," such as environmental benefits. The Guide does not specifically address claims outside of the fuel economy context. However, marketers may wish to consult additional Commission guidance, such as the Guides for the Use of Environmental Marketing Claims (Green Guides) (16 CFR Part 260).

¹⁶ See § 259.4(j).

¹⁷ 40 FR 42003 (Sept. 10, 1975).

disclose the corresponding EPA estimates with more prominence than other estimates; 2) identify the source of the non-EPA information; and 3) disclose how the non-EPA test differs from the EPA test in terms of driving conditions and other relevant variables.

In its 2016 Notice, the Commission did not propose changing this approach. The Commission identified no evidence that fuel economy claims are deceptive if accompanied by the clear and prominent disclosures described above. Therefore, consistent with the previous Guide, the proposed Guide recommended specific disclosures related to non-EPA claims to reduce the possibility of deception.¹⁸ Finally, the previous Guide addressed the relative size and prominence of fuel economy claims based on non-EPA and EPA estimates in television, radio, and print advertisements. The Commission proposed retaining this guidance but also clarifying that it applies to any advertising medium (not solely television, radio, and print).

Comments: Though the comments generally supported the guidance on non-EPA estimates, they raised two issues. First, the Alliance explained that, although such claims are not common, advertisers believe actual driving results achieved under controlled conditions other than the EPA testing methodology may be valuable to consumers in some circumstances. Both the Alliance and the Global Automakers noted that, under limited conditions, manufacturers may want to use non-EPA claims prior to a new vehicle launch when the formal EPA estimates are not yet available. In this case, a manufacturer may give its projection of the anticipated EPA estimates based on its testing using the EPA methodology. If such estimates are clearly identified as projections, the commenters asserted they are not deceptive.

Second, Global Automakers noted that, in some cases, a manufacturer may wish to

¹⁸ The guidance assumes that the advertised non-EPA estimates are not identical to the EPA estimates.

include actual on-road test results from reputable organizations to provide additional information regarding the vehicle's fuel economy. In explaining the road test procedures and conditions, according to Global Automakers, it should be sufficient to simply state that the data is generated through on-road tests and specify the organization that conducted the tests, without providing extensive details regarding the test procedures and conditions.

Discussion: In the final Guide, the Commission has not changed the non-EPA claims section. Specifically, the final Guide does not address the use of “preliminary” test results in advertising. It is not clear how consumers interpret such claims. In addition, the Commission disagrees with Global Automakers regarding disclosures for advertisements containing “on-road” test results. Without the full set of disclosures recommended by the Guide, it is not clear whether consumers will understand that such “road test” results are inconsistent with the EPA-approved ratings. Given this uncertainty as to what consumers would take away from preliminary test results in advertising, the Commission has decided not to alter the non-EPA claims section.

E. Guide Format and Language

Background: The Commission proposed improving the Guide's format by making it consistent with recently amended FTC guides, such as the Guides for the Use of Environmental Marketing Claims.¹⁹ Under this approach, the Guide includes a list of general principles to help advertisers avoid deceptive practices with detailed examples to illustrate those principles.

Comments: The commenters generally agreed with, or did not comment on, the revised format. CFA, however, raised concerns about the language used to identify deceptive claims in

¹⁹ See Guides for the Use of Environmental Marketing Claims (Green Guides) (16 CFR part 260).

the proposed Guide examples.²⁰ It noted that, the conclusions in several examples state that the claim in question is “likely” to be deceptive. CFA noted this approach conflicts with the Green Guides, which generally states the example claims “are” deceptive. In the commenters’ view, the weaker language in the reformatted Guide serves neither businesses, which seek clear, firm guidance, nor consumers who may fall victim to unscrupulous businesses that make claims inconsistent with the Guides and then point to the Guides’ vagueness as a defense. CFA further stated that the lack of clarity hampers the enforcement efforts of state and local consumer protection agencies and private attorneys.²¹

Discussion: The Commission agrees that the guidance should be consistent with similar documents such as the Green Guides (16 CFR part 260) and Endorsement Guides (16 CFR part 255). Because these guides reflect the Commission’s understanding of how consumers are likely to interpret the applicable claims, it is reasonable to follow a consistent format for the examples in each. The guides set forth general principles, together with instructive examples, designed to help marketers avoid deceptive claims. However, as noted in the guides themselves, determinations regarding particular claims will depend on the specific advertisement at issue.²²

²⁰ The Alliance agreed with the Commission’s decision not to provide specific guidance related to fuel economy claims in limited-format advertising. Interested parties may contact the FTC to discuss specific limited-format situations as they arise. Further developments in this area may suggest the need for the development of additional guidelines in the future.

²¹ CFA also recommended that the Commission replace the phrase “estimated MPG” with “fuel economy claim” in proposed § 259.3. The Commission has made this change to clarify the guidance’s breadth. In addition, CFA recommended the section clarify that if a MPG number appears in an advertisement, the qualifying information recommended by the Guides (*e.g.*, EPA estimate) should be clearly, conspicuously, and prominently displayed adjacent to the MPG number. The final Guide does not include such a change because the guidance already states such disclosures should appear in “close proximity” to the claim.

²² In determining whether an advertisement, including its format, misleads consumers, the Commission considers the overall “net impression” it conveys. *See* Deception Policy Statement, 103 F.T.C. at 175.

Nevertheless, to ensure consistency with other guidance and avoid confusion, the Commission has modified the examples in the final Guide consistent with the commenters' suggestion.

List of Subjects in 16 CFR Part 259

Advertising, Fuel economy, Trade practices.

Final Amendments

For the reasons set forth in the preamble, the Commission revises 16 CFR part 259 to read as follows:

PART 259—GUIDE CONCERNING FUEL ECONOMY ADVERTISING FOR NEW AUTOMOBILES

Sec.

259.1 Purpose.

259.2 Definitions.

259.3 Qualifications and disclosures.

259.4 Advertising guidance.

Authority: 15 U.S.C. 41–58.

§259.1 Purpose.

The Guide in this part contains administrative interpretations of laws enforced by the Federal Trade Commission. Specifically, the Guide addresses the application of Section 5 of the FTC Act (15 U.S.C. 45) to the use of fuel economy information in advertising for new automobiles. This guidance provides the basis for voluntary compliance with the law by advertisers and endorsers. Practices inconsistent with this Guide may result in corrective action by the Commission under Section 5 if, after investigation, the Commission has reason to believe that the practices fall within the scope of conduct declared unlawful by the statute. The Guide

sets forth the general principles that the Commission will use in such an investigation together with examples illustrating the application of those principles. The Guide does not purport to cover every possible use of fuel economy in advertising. Whether a particular advertisement is deceptive will depend on the specific advertisement at issue.

§ 259.2 Definitions.

For the purposes of this part, the following definitions shall apply:

Alternative fueled vehicle. Any vehicle that qualifies as a covered vehicle under part 309 of this chapter.

Automobile. Any new passenger automobile, medium duty passenger vehicle, or light truck for which a fuel economy label is required under the Energy Policy and Conservation Act (42 U.S.C. 32901 *et seq.*) or rules promulgated thereunder, the equitable or legal title to which has never been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser or lessee. For the purposes of this part, the terms “vehicle” and “car” have the same meaning as “automobile.”

Dealer. Any person located in the United States or any territory thereof engaged in the sale or distribution of new automobiles to the ultimate purchaser.

EPA. The U.S. Environmental Protection Agency.

EPA city fuel economy estimate. The city fuel economy determined in accordance with the city test procedure as defined and determined pursuant to 40 CFR part 600, subpart D.

EPA combined fuel economy estimate. The fuel economy value determined for a vehicle (or vehicles) by harmonically averaging the city and highway fuel economy values, weighted 0.55 and 0.45 respectively, determined pursuant to 40 CFR part 600, subpart D.

EPA driving range estimate. An estimate of the number of miles a vehicle will travel between

refueling as defined and determined pursuant to 40 CFR part 600, subpart D.

EPA fuel economy estimate. The average number of miles traveled by an automobile per volume of fuel consumed (*i.e.*, Miles-Per-Gallon (“MPG”) rating) as calculated under 40 CFR part 600, subpart D.

EPA highway fuel economy estimate. The highway fuel economy determined in accordance with the highway test procedure as defined and determined pursuant to 40 CFR part 600, subpart D.

Flexible fueled vehicle. Any motor vehicle (or motor vehicle engine) engineered and designed to be operated on any mixture of two or more different fuels.

Fuel. (1) Gasoline and diesel fuel for gasoline- or diesel-powered automobiles;

(2) Electricity for electrically-powered automobiles;

(3) Alcohol for alcohol-powered automobiles;

(4) Natural gas for natural gas-powered automobiles; or

(5) Any other fuel type used in a vehicle for which EPA requires a fuel economy label under 40 CFR part 600, subpart D.

Manufacturer. Any person engaged in the manufacturing or assembling of new automobiles, including any person importing new automobiles for resale and any person who acts for, and is under the control, of such manufacturer, assembler, or importer in connection with the distribution of new automobiles.

Model type. A unique combination of car line, basic engine, and transmission class as defined by **40 CFR part 600, subpart D.**

Ultimate purchaser or lessee. The first person, other than a dealer purchasing in his or her capacity as a dealer, who in good faith purchases a new automobile for purposes other than resale or leases such vehicle for his or her personal use.

Vehicle configuration. The unique combination of automobile features, as defined in 40 CFR part 600.

§ 259.3 Qualifications and disclosures.

To prevent deceptive claims, qualifications and disclosures should be clear, prominent, and understandable. To make disclosures clear and prominent, marketers should use plain language and sufficiently large type for a person to see and understand them, should place disclosures in close proximity to the qualified claim, and should avoid making inconsistent statements or using distracting elements that could undercut or contradict the disclosure. The disclosures should also appear in the same format as the claim. For example, for television advertisements, if the fuel economy claim appears in the video, the disclosure recommended by this Guide should appear in the visual format; if the fuel economy claim is audio, the disclosure should be in audio.

§ 259.4 Advertising guidance.

(a) *Misrepresentations.* It is deceptive to misrepresent, directly or by implication, the fuel economy or driving range of an automobile.

(b) *General fuel economy claims.* General unqualified fuel economy claims, which do not reference a specific fuel economy estimate, likely convey a wide range of meanings about a vehicle's fuel economy relative to other vehicles. Such claims, which inherently involve comparisons to other vehicles, can mislead consumers about the vehicle class included in the comparison, as well as the extent to which the advertised vehicle's fuel economy differs from other models. Because it is highly unlikely that advertisers can substantiate all reasonable interpretations of these claims, advertisers making general fuel economy claims should disclose the advertised vehicle's EPA fuel economy estimate in the form of the EPA MPG rating.

Example 1: A new car advertisement states: “This vehicle gets great mileage.” The claim is likely to convey a variety of meanings, including that the vehicle has a better MPG rating than all or almost all other cars on the market. However, the advertised vehicle’s EPA fuel economy estimates are only slightly better than the average vehicle on the market. Because the advertiser cannot substantiate that the vehicle’s rating is better than all or almost all other cars on the market, the advertisement is deceptive. In addition, the advertiser may not be able to substantiate other reasonable interpretations of the claim. To avoid deception, the advertisement should disclose the vehicle’s EPA fuel economy estimate (e.g., “EPA-estimated 27 combined MPG”).

Example 2: An advertisement states: “This car gets great gas mileage compared to other compact cars.” The claim is likely to convey a variety of meanings, including that the vehicle gets better gas mileage than all or almost all other compact cars. However, the vehicle’s EPA fuel economy estimates are only slightly better than average compared to other models in its class. Because the advertiser cannot substantiate that the vehicle’s rating is better than all or almost all other compact cars, the advertisement is deceptive. In addition, the advertiser may not be able to substantiate other reasonable interpretations of the claim. To address this problem, the advertisement should disclose the vehicle’s EPA fuel economy estimate.

(c) *Matching the EPA estimate to the claim.* EPA fuel economy estimates should match the mode of driving claim appearing in the advertisement. If they do not, consumers are likely to associate the stated fuel economy estimate with a different type of driving. Specifically, if an advertiser makes a city or a highway fuel economy claim, it should disclose the corresponding EPA-estimated city or highway fuel economy estimate. If the advertiser makes both a city and a

highway fuel economy claim, it should disclose both the EPA estimated city and highway fuel economy rating. If the advertiser makes a general fuel economy claim without specifically referencing city or highway driving, it should disclose the EPA combined fuel economy estimate, or, alternatively, both the EPA city and highway fuel economy estimates.

Example 1: An automobile advertisement states that model “XYZ gets great gas mileage in town.” However, the advertisement does not disclose the EPA city fuel economy estimate. Instead, it only discloses the EPA highway fuel economy estimate, which is higher than the model’s city estimate. This claim likely conveys to a significant proportion of reasonable consumers that the highway estimate disclosed in the advertisement applies to city driving. Thus, the advertisement is deceptive to consumers. To remedy this problem, the advertisement should disclose the EPA city fuel economy estimate (*e.g.*, “32 MPG in the city according to the EPA estimate”).

Example 2: A new car advertisement states that model “XZA gives you great gas mileage” but only provides the EPA highway fuel economy estimate. Given the likely inconsistency between the general fuel economy claim, which does not reference a specific type of driving, and the disclosed EPA highway estimate, the advertisement is deceptive to consumers. To address this problem, the advertisement should disclose the EPA combined estimate (*e.g.*, “37 MPG for combined driving according to the EPA estimate”), or both the EPA city and highway fuel economy estimates.

Example 3: An advertisement states: “according to EPA estimates, new cars in this class are rated at between 20 and 32 MPG, while the EPA estimate for this car is an impressive 35 MPG highway.” The advertisement is likely to imply that the 20 to 32 MPG range and 35 MPG estimate are comparable. In fact, the “20 and 32 MPG” range reflects EPA

city estimates. Therefore, the advertisement is deceptive. To address this problem, the advertisement should only provide an apples-to-apples comparison – either using the highway range for the class or using the city estimate for the advertised vehicle.

(d) *Identifying fuel economy and driving range ratings as estimates.* Advertisers citing EPA fuel economy or driving range figures should disclose that these numbers are estimates.

Without such disclosures, consumers may incorrectly assume that they will achieve the mileage or range stated in the advertisement. In fact, their actual mileage or range will likely vary for many reasons, including driving conditions, driving habits, and vehicle maintenance. To address potential deception, advertisers may state that the values are “EPA estimate(s),” or use equivalent language that informs consumers that they will not necessarily achieve the stated MPG rating or driving range.

Example 1: An automobile manufacture’s website states, without qualification, “This car gets 40 MPG on the highway.” The claim likely conveys to a significant proportion of reasonable consumers that they will achieve 40 MPG driving this vehicle on the highway. The advertiser based its claim on an EPA highway estimate. However, EPA provides that estimate primarily for comparison purposes – it does not necessarily reflect real world driving results. Therefore, the claim is deceptive. In addition, the use of the term “gets,” without qualification, may lead some consumers to believe not only that they can, but will consistently, achieve the stated mileage. To address these problems, the advertisement should clarify that the MPG value is an estimate by stating “EPA estimate” or equivalent language.

(e) *Disclosing EPA test as source of fuel economy and driving range estimates.* Advertisers citing any EPA fuel economy or driving range figures should identify EPA as the source of the

test so consumers understand that the estimate is comparable to EPA estimates for competing models. Doing so prevents deception by ensuring that consumers do not associate the claimed ratings with a test other than the EPA-required procedures. Advertisers may avoid deception by stating that the values are “EPA estimate(s),” or equivalent language that identifies the EPA test as the source.

Example 1: A radio commercial for the “XTQ” car states that the vehicle “is rated at an estimated 28 MPG in the city” but does not disclose that an EPA test is the source of this MPG estimate. This advertisement may convey that the source of this test is an entity other than EPA. To avoid deception, the advertisement should state that the MPG figures are EPA estimates.

(f) *Specifying driving modes for fuel economy estimates.* If an advertiser cites an EPA fuel economy estimate, it should identify the particular type of driving associated with the estimate (*i.e.*, estimated city, highway, or combined MPG). Advertisements failing to do so can deceive consumers who incorrectly assume the disclosure applies to a specific type of driving, such as combined or highway, which may not be the driving type the advertiser intended. Thus, such consumers may believe the model’s fuel economy rating is higher than it actually is.

Example 1: A television commercial for the car model “ZTA” informs consumers that the ZTA is rated at “25 miles per gallon according to the EPA estimate” but does not disclose whether this number is a highway, city, or combined estimate. The advertisement likely conveys to a significant proportion of reasonable consumers that the 25 MPG figure reflects normal driving (*i.e.*, a combination of city and highway driving), not the highway rating as intended by the advertiser. In fact, the 25 MPG rating is the vehicle’s EPA highway estimate. Therefore, the advertisement is deceptive.

(g) *Within vehicle class comparisons.* If an advertisement contains an express comparative fuel economy claim where the relevant comparison is to any group or class, other than all available automobiles, the advertisement should identify the group or class of vehicles used in the comparison. Without such qualifying information, many consumers are likely to assume that the advertisement compares the vehicle to all new automobiles.

Example 1: An advertisement claims that sports car X “outpaces other cars’ gas mileage.” The claim likely conveys a variety of meanings to a significant proportion of reasonable consumers, including that this vehicle has a higher MPG rating than all or almost all other vehicles on the market. Although the vehicle’s MPG rating compares favorably to other sports cars, its fuel economy is only better than roughly half of all new automobiles on the market. Therefore, the claim is deceptive.

(h) *Comparing different model types.* Fuel economy estimates are assigned to specific model types under 40 CFR part 600, subpart D (*i.e.*, unique combinations of car line, basic engine, and transmission class). Therefore, advertisers citing MPG ratings for certain models should ensure that the rating applies to the model type depicted in the advertisement. It is deceptive to state or imply that a rated fuel economy figure applies to a vehicle featured in an advertisement if the estimate does not apply to vehicles of that model type.

Example 1: A manufacturer’s advertisement states that model “PDQ” gets “great gas mileage” but depicts the MPG numbers for a similar model type known as the “Econo-PDQ.” The advertisement is likely to convey that the claimed MPG rating applies to all types of the PDQ model. However, the “Econo-PDQ” has a better fuel economy rating than other types of the “PDQ” model. Therefore, the advertisement is deceptive.

(i) *“Up to” claims.* Advertisers should avoid using the term “up to” without adequate explanatory language if they intend to communicate that certain versions of a model (*i.e.*, model types) are rated at a stated fuel economy estimate. A significant proportion of reasonable consumers are likely to interpret such claims to mean that the stated MPG can be achieved if the vehicle is driven under certain conditions. Therefore, to address the risk of deception, advertisers should qualify the claim by clearly and prominently disclosing the stated MPG applies to a particular vehicle model type.

Example 1: An advertisement states, without further explanation, that a vehicle model VXR will achieve “up to 40 MPG on the highway.” The advertisement is based on a particularly efficient type of this model, with specific options, with an EPA highway estimate of 40 MPG. However, other types of model VXR have lower EPA MPG estimates. A significant proportion of reasonable consumers likely interpret the “up to” claim as applying to all VXR model types. Therefore, the advertisement is deceptive. To address this problem, the advertisement should clearly and prominently disclose that the 40 MPG rating does not apply to all model types of the VXR or use language other than “up to” that better conveys the claim.

(j) *Claims for flexible-fueled vehicles.* Advertisements for flexible-fueled vehicles should not mislead consumers about the vehicle’s fuel economy when operated with alternative fuel. If an advertisement for a flexible-fueled vehicle (other than a plug-in hybrid electric vehicle) mentions the vehicle’s flexible-fuel capability and makes a fuel economy claim, it should clearly and prominently qualify the claim to identify the type of fuel used. Without such qualification, consumers are likely to take away that the stated fuel economy estimate applies to both gasoline and alternative fuel operation.

Example 1: An automobile advertisement states: “This flex-fuel powerhouse has a 30 MPG highway rating according to the EPA estimate.” The advertisement likely implies that the 30 MPG rating applies to both gasoline and alternative fuel operation. In fact, the ethanol EPA estimate for this vehicle is 25 MPG. Therefore, the advertisement is deceptive. To address this problem, the advertisement could clearly and prominently qualify the claim or disclose the MPG ratings for both gasoline and alternative fuel operation.

(k) *General driving range claims.* General unqualified driving range claims, which do not reference a specific driving range estimate, are difficult for consumers to interpret and likely convey a wide range of meanings about a vehicle’s range relative to other vehicles. Such claims, which inherently involve comparisons to other vehicles, can mislead consumers about the vehicle class included in the comparison as well as the extent to which the advertised vehicle’s driving range differs from other models. Consumers may take away a range of reasonable interpretations from these claims. To avoid possible deception, advertisers making general driving range claims should disclose the advertised vehicle’s EPA driving range estimate.

Example 1: An advertisement for an electric vehicle states: “This car has a great driving range.” This claim likely conveys a variety of meanings, including that the vehicle has a better driving range than all or almost all other electric vehicles. However, the EPA driving range estimate for this vehicle is only slightly better than roughly half of all other electric vehicles on the market. Because the advertiser cannot substantiate that the vehicle’s driving range is better than all or almost all other electric vehicles, the advertisement is deceptive. In addition, the advertiser may not be able to substantiate other reasonable interpretations of the claim. To address this problem, the advertisement

should disclose the vehicle's EPA driving range estimate (*e.g.*, "EPA-estimated range of 70 miles per charge").

(l) *Use of non-EPA estimates*—(1) *Disclosure content.* Given consumers' exposure to EPA estimated fuel economy values over the last several decades, fuel economy and driving range estimates derived from non-EPA tests can lead to deception if consumers understand such estimates to be fuel economy ratings derived from EPA-required tests. Accordingly, advertisers should avoid such claims and disclose the EPA fuel economy or driving range estimates.

However, if an advertisement includes a claim about a vehicle's fuel economy or driving range based on a non-EPA estimate, advertisers should disclose the EPA estimate and disclose with substantially more prominence than the non-EPA estimate:

- (i) That the fuel economy or driving range information is based on a non-EPA test;
- (ii) The source of the non-EPA test;
- (iii) The EPA fuel economy estimates or EPA driving range estimates for the vehicle; and
- (iv) All driving conditions or vehicle configurations simulated by the non-EPA test that are different from those used in the EPA test. Such conditions and variables may include, but are not limited to, road or dynamometer test, average speed, range of speed, hot or cold start, temperature, and design or equipment differences.

(2) *Disclosure format.* The Commission regards the following as constituting "substantially more prominence":

- (i) *For visual disclosures on television.* If the fuel economy claims appear only in the visual portion, the EPA figures should appear in numbers twice as large as those used for any other estimate, and should remain on the screen at least as long as any other estimate. Each EPA

figure should be broadcast against a solid color background that contrasts easily with the color used for the numbers when viewed on both color and black and white television.

(ii) *For audio disclosures.* For radio and television advertisements in which any other estimate is used only in the audio, equal prominence should be given to the EPA figures. The Commission will regard the following as constituting equal prominence: the EPA estimated city and/or highway MPG should be stated, either before or after each disclosure of such other estimate, at least as audibly as such other estimate.

(iii) *For print and Internet disclosures.* The EPA figures should appear in clearly legible type at least twice as large as that used for any other estimate. The EPA figures should appear against a solid color, and contrasting background. They may not appear in a footnote unless all references to fuel economy appear in a footnote.

Example 1: An Internet advertisement states: “Independent driving experts took the QXT car for a weekend spin and managed to get 55 miles-per-gallon under a variety of driving conditions.” It does not disclose the actual EPA fuel economy estimates, nor does it explain how conditions during the “weekend spin” differed from those under the EPA tests. This advertisement likely conveys that the 55 MPG figure is the same or comparable to an EPA fuel economy estimate for the vehicle. This claim is deceptive because it fails to disclose that fuel economy information is based on a non-EPA test, the source of the non-EPA test, the EPA fuel economy estimates for the vehicle, and all driving conditions or vehicle configurations simulated by the non-EPA test that are different from those used in the EPA test.

Example 2: An advertisement states: “The XZY electric car has a driving range of 110 miles per charge in summer conditions according to our expert’s test.” It provides no

additional information regarding this driving range claim. This advertisement likely conveys that this 110-mile driving range figure is comparable to an EPA driving range estimate for the vehicle. The advertisement is deceptive because it does not clearly state that the test is a non-EPA test; it does not provide the EPA estimated driving range; and it does not explain how conditions referred to in the advertisement differed from those under the EPA tests. Without this information, consumers are likely to confuse the claims with range estimates derived from the official EPA test procedures.

By direction of the Commission.

Donald S. Clark
Secretary.

[FR Doc. 2017-19869 Filed: 9/18/2017 8:45 am; Publication Date: 9/19/2017]